



PUBLIC NOTICE

Federal Communications Commission
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DA 05-1390
May 18, 2005

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
PETITION FOR DECLARATORY RULING FILED BY SUNCOM, AND
OPPOSITION AND CROSS-PETITION FOR DECLARATORY RULING FILED
BY DEBRA EDWARDS, SEEKING DETERMINATION OF WHETHER STATE
LAW CLAIMS REGARDING EARLY TERMINATION FEES ARE SUBJECT
TO PREEMPTION UNDER 47 U.S.C. SECTION 332(c)(3)(A)**

WT DOCKET NO. 05-193

**Comments Due: 30 Days After Publication in the Federal Register
Reply Comments Due: 50 Days After Publication in the Federal Register**

On February 22, 2005, SunCom Wireless Operating Company, L.L.C., f/k/a Triton PCS Operating Company, L.L.C. ("SunCom") filed a petition for a declaratory ruling ("SunCom Petition").¹ In its Petition, SunCom requests that the Federal Communications Commission ("Commission") declare that early termination fees charged to commercial mobile radio service ("CMRS") customers are "rates charged" under Section 332(c)(3)(A) of the Communications Act.² This petition is filed pursuant to a court order in *Edwards v. SunCom*, a class action lawsuit brought in South Carolina state court that asserts certain state law claims regarding contractual early termination fees charged by SunCom. SunCom filed the petition at the direction of the court, which has stayed the litigation pending final resolution of the petition by the Commission.³

On March 4, 2005, Debra Edwards ("Edwards"), plaintiff in *Edwards v. SunCom*, filed an Opposition to Petition for Declaratory Ruling and Cross-Petition for Declaratory Rulings

¹ See Petition for Declaratory Ruling filed by SunCom Operating Company L.L.C., WT Docket No. 05-193, on February 22, 2005.

² See SunCom Petition at p. 9-19.

³ See Supplemental Order Requiring Defendant to File Petition for Declaratory Ruling at the Federal Communications Commission and Staying Case until Such Ruling is Issued dated January 18, 2005 ("court order"), *Edwards v. SunCom*, State of South Carolina, County of Horry, No. 02-CP-26-3359 (Ct. of Com. Pleas. May 25, 2004) ("*Edwards v. SunCom*").

("Edwards Petition").⁴ In the Edwards Petition, Edwards opposes the SunCom Petition and requests a declaratory ruling that the state-law claims concerning contractual early termination fees asserted in *Edwards v. SunCom* do not amount to regulation of cellular telephone service rates proscribed by Section 332(c)(3)(A) of the Communications Act. The SunCom and Edwards Petitions raise important issues, and in this Public Notice, we seek comment on these Petitions.⁵

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 30th day after publication of this Public Notice in the Federal Register, and reply comments may be filed on or before the 50th day after publication of this Public Notice in the Federal Register. When filing comments, please reference WT Docket No. 05-193. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority

⁴ See Opposition to Petition for Declaratory Ruling and Cross-Petition for Declaratory Rulings filed by Debra Edwards, WT Docket No. 05-193, on March 4, 2005.

⁵ We note that the Wireless Bureau is contemporaneously releasing a separate public notice seeking comment on another petition for declaratory ruling that raises preemption-related issues regarding early termination fees. See *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Filed by CTIA Regarding Whether Early Termination Fees Are "Rates" Within 47 U.S.C. Section 332(c)(3)(A)*, Public Notice, WT Docket No. 05-194, DA 05-1389 (rel. May 18, 2005).

Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

This proceeding shall be treated as a “permit but disclose” proceeding in accordance with the Commission’s *ex parte* rules, 47 C.F.R. § 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

The full text of the petitions and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Christina Clearwater, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202-418-1893.

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